

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act regarding the total maximum daily load
 4 program for state waters; amending s. 403.067, F.S., which
 5 provides an exemption from public records requirements for
 6 agricultural records relating to processes or methods of
 7 production, costs of production, profits, or other
 8 financial information held by the Department of
 9 Agriculture and Consumer Services pursuant to interim
 10 measures, best management practices, and other measures
 11 used to achieve levels of pollution reduction established
 12 by the department; making editorial changes; removing the
 13 scheduled repeal of the exemption; providing an effective
 14 date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Paragraph (c) of subsection (7) of section
 19 403.067, Florida Statutes, is amended to read:

20 403.067 Establishment and implementation of total maximum
 21 daily loads.--

22 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
 23 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

24 (c) Best management practices.--

25 1. The department, in cooperation with the water
 26 management districts and other interested parties, as
 27 appropriate, may develop suitable interim measures, best
 28 management practices, or other measures necessary to achieve the

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29 level of pollution reduction established by the department for
30 nonagricultural nonpoint pollutant sources in allocations
31 developed pursuant to subsection (6) and this subsection. These
32 practices and measures may be adopted by rule by the department
33 and the water management districts pursuant to ss. 120.536(1)
34 and 120.54, and, where adopted by rule, shall be implemented by
35 those parties responsible for nonagricultural nonpoint source
36 pollution.

37 2. The Department of Agriculture and Consumer Services may
38 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
39 suitable interim measures, best management practices, or other
40 measures necessary to achieve the level of pollution reduction
41 established by the department for agricultural pollutant sources
42 in allocations developed pursuant to subsection (6) and this
43 subsection. These practices and measures may be implemented by
44 those parties responsible for agricultural pollutant sources and
45 the department, the water management districts, and the
46 Department of Agriculture and Consumer Services shall assist
47 with implementation. In the process of developing and adopting
48 rules for interim measures, best management practices, or other
49 measures, the Department of Agriculture and Consumer Services
50 shall consult with the department, the Department of Health, the
51 water management districts, representatives from affected
52 farming groups, and environmental group representatives. Such
53 rules shall also incorporate provisions for a notice of intent
54 to implement the practices and a system to assure the
55 implementation of the practices, including recordkeeping
56 requirements.

57 3. Where interim measures, best management practices, or
58 other measures are adopted by rule, the effectiveness of such
59 practices in achieving the levels of pollution reduction
60 established in allocations developed by the department pursuant
61 to subsection (6) and this subsection shall be verified at
62 representative sites by the department. The department shall use
63 best professional judgment in making the initial verification
64 that the best management practices are effective and, where
65 applicable, shall notify the appropriate water management
66 district and the Department of Agriculture and Consumer Services
67 of its initial verification prior to the adoption of a rule
68 proposed pursuant to this paragraph. Implementation, in
69 accordance with rules adopted under this paragraph, of practices
70 that have been initially verified to be effective, or verified
71 to be effective by monitoring at representative sites, by the
72 department, shall provide a presumption of compliance with state
73 water quality standards and release from the provisions of s.
74 376.307(5) for those pollutants addressed by the practices, and
75 the department is not authorized to institute proceedings
76 against the owner of the source of pollution to recover costs or
77 damages associated with the contamination of surface water or
78 groundwater caused by those pollutants.

79 4. Where water quality problems are demonstrated, despite
80 the appropriate implementation, operation, and maintenance of
81 best management practices and other measures according to rules
82 adopted under this paragraph, the department, a water management
83 district, or the Department of Agriculture and Consumer
84 Services, in consultation with the department, shall institute a

85 reevaluation of the best management practice or other measure.
 86 Should the reevaluation determine that the best management
 87 practice or other measure requires modification, the department,
 88 a water management district, or the Department of Agriculture
 89 and Consumer Services, as appropriate, shall revise the rule to
 90 require implementation of the modified practice within a
 91 reasonable time period as specified in the rule.

92 5. ~~Individual~~ Agricultural records relating to processes
 93 or methods of production, ~~or relating to~~ costs of production,
 94 profits, or other financial information held by ~~which are~~
 95 ~~otherwise not public records, which are reported to the~~
 96 Department of Agriculture and Consumer Services pursuant to
 97 subparagraphs 3. and 4. or pursuant to any rule adopted pursuant
 98 to subparagraph 2. are ~~shall be~~ confidential and exempt from s.
 99 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon
 100 request, records made confidential and exempt pursuant to this
 101 subparagraph shall be released to ~~of~~ the department or any water
 102 management district, ~~the Department of Agriculture and Consumer~~
 103 ~~Services shall make such individual agricultural records~~
 104 ~~available to that agency,~~ provided that the confidentiality
 105 specified by this subparagraph for such records is maintained.
 106 ~~This subparagraph is subject to the Open Government Sunset~~
 107 ~~Review Act of 1995 in accordance with s. 119.15, and shall stand~~
 108 ~~repealed on October 2, 2006, unless reviewed and saved from~~
 109 ~~repeal through reenactment by the Legislature.~~

110 6. The provisions of subparagraphs 1. and 2. shall not
 111 preclude the department or water management district from
 112 requiring compliance with water quality standards or with

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113 | current best management practice requirements set forth in any
114 | applicable regulatory program authorized by law for the purpose
115 | of protecting water quality. Additionally, subparagraphs 1. and
116 | 2. are applicable only to the extent that they do not conflict
117 | with any rules adopted by the department that are necessary to
118 | maintain a federally delegated or approved program.

119 | Section 2. This act shall take effect October 1, 2006.